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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,629	01/14/2004	Mark James Kline	8194C	4664

27752 7590 10/06/2005

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EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/757,629	Applicant(s) KLINE ET AL.	
	Examiner Laura C. Hill	Art Unit 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 8-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,5 and 8-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see pages 5-9 of Remarks, filed 2 August 2005, with respect to the rejection(s) of claim(s) 1, 2 and 9 under 102(b) by Rossini et al. (US 5,312,387) and with respect to the rejection of claim 10 under 103(a) over Rossini et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection of claims 1, 4-5, and 8-10 is made under 103(a) in view of Schmidt (US 3,797,495), and further in view of Vukos et al. (US Des. 422,078); and of claims 11-15 under 103(a) in view of Schmidt (US 3,797,495), and further in view of Vukos et al. (US Des 422,078), and further in view of Tritsch (US 3,937,221) as discussed below.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the 'lower and upper edges' must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Language Interpretation***

3. The term 'proximal' as recited in claim 1 is given its broadest standard definition of 'nearest the point of attachment' while the term 'distal' is interpreted to be 'farthest away from the point of attachment' (Merriam-Webster Online dictionary).

4. The 'lower edge' as recited in claims 4-5 is interpreted to be edge D and the 'upper edge' is interpreted to be edge C.

### ***Claim Rejections - 35 USC § 103***

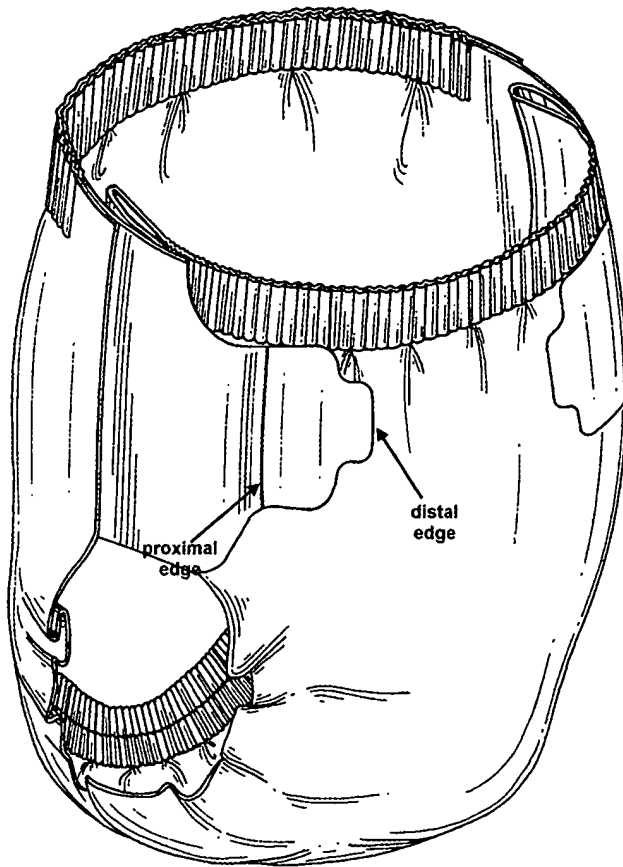
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 1, 4-5 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (US 3,797,495 herein 'Schmidt'), and further in view of Vukos et al. (US Des. 422,078 herein 'Vukos'). Regarding claims 1 and 8-9 Schmidt discloses a diaper 20 with absorbent pad/chassis 22 to be worn about a wearer (col. 6, ll. 39-43, figure 2) comprising: a surface fastening system 28 with first tape base/fastening element 12 and protective cover strip/second facing fastening element 30, the surface fastening system 28 including an effective Y dimension substantially parallel to the longitudinal article axis (col. 6, ll. 63-68, figure 3), wherein the backing tape used in surface fastening system 28 is able to withstand different tear and tensile forces applied across the tape in varying directions and degrees when user moves (col. 2, ll. 1-11). Schmidt *does not expressly disclose* the Y dimension increasing from a distal to proximal edge of the first fastening system. **Vukos** discloses disposable absorbent article to be worn about a user with a Y dimension increasing from a distal to proximal edge (figure 1).



**FIG. 1**

One would be motivated to modify the fastening system of Schmidt with the increasing Y-dimension of Vukos since doing so would provide an easier mechanism to grip and open the tab and since both references disclose wearing articles with fastening systems. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the fastening system, thus providing a fastening system with an increasing Y-dimension from the distal to proximal edge.

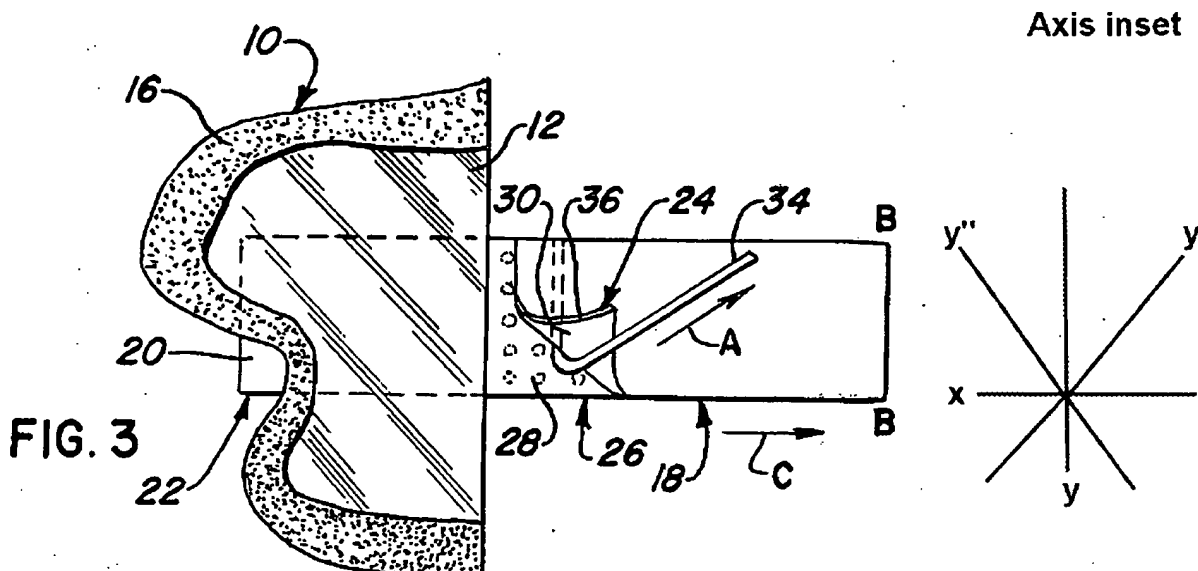
Regarding claim 4 Vukos further discloses the proximal/lower edge being longer than the distal/upper edge (figure 1).

Regarding claim 5 Schmidt/Vukos further disclose protective cover strip/second facing fastening element 30 having a portion of the lower edge being unjoined or at least partially detached from the underlying structure (figure 3).

Regarding claim 10 Vukos further discloses the disposable absorbent article with first and second fastening elements attached to form a waist opening and a pair of leg openings (figures 1 and 4).

6. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (US 3,797,495; herein 'Schmidt') as applied to claim 1 above, and further in view of Vukos et al. (US Des. 422,078; herein 'Vukos'), and further in view of Tritsch (US 3,937,221; herein 'Tritsch'). Regarding claim 11 Schmidt/Vukos disclose the different levels of resistance as discussed above with respect to claim 1. Schmidt/Vukos *do not expressly disclose* a first peel load value in a plane non-parallel to the xz-plane greater than a second peel load value in the xz-plane. **Tritsch** discloses diaper 10 with tab 18 having separator string 34, where separation is effected by grasping the protruding portion of string 34 and peeling end portion 24 away from central portion from central portion 26 in the diagonal direction of arrow A (i.e.: in a plane non-parallel to the xz-plane/first peel load), thereby lifting up one corner of the folded-over end portion 24 (col. 3, line 8, col. 4, ll. 38-40, col. 5, ll. 1-6, figure 3). Tritsch further discloses the user is then able to grasp free end 24 of tab 18 near end border 36 and pull in a direction indicated by arrow C (in a plane parallel to the xz-plane/second peel load). Since the user must pull in a plane non-parallel to the xz-plane/first peel load first as indicated by arrow A to be able to subsequently pull in a plane parallel to the xz-plane/second peel

load as indicated by arrow C, the first diagonal peel load required to start the tab lifting action is greater than the second parallel peel load.



Regarding claims 12-15 Schmidt/Vukos/Tritsch do not expressly disclose peak peel load or plane projection angle values. Peak peel load and plane projection angles are result effective variables because they are at least dependent on the size of the fastening system and article. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Schmidt/Vukos/Tritsch with peak peel load and plane projection angles since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

## Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Plaschko et al. (US Des. 377,979) is cited for showing a diaper-

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fastening tab with a longitudinally increasing Y dimension from the distal to proximal edge. Gibbs (US 6,942,651) is cited for showing diaper fastener area 133 with first edge 163 that is non-parallel to the primary pull direction so force can be varied across the width of the tab fastener. Lavon et al. (US 5,669,897) is cited for showing a diaper elastic side panel that stretches in two different directions that are non-parallel to the xz-plane. Gibbs (US 2003/0083635) is cited for showing absorbent article side panels 40 that have a multi-directional stretch but only in entirely longitudinal and lateral directions. Gibbs (US 2003/0109844) is cited for showing a garment fastener tab with first elastic region having a lower stretch resistance than a second elastic region and further discloses stretch resistance is dependent on each region's modulus of elasticity, width and thickness. Strickland et al. (US 4,253,461) is cited for showing diaper thigh seal/side panel formed by lower securement means 15 lying in an angled plane between 90-140 degrees and forming a securement vector for improved garment fit.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

